

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

FIRST STUDENT, INC.

Employer

And

Case 13-UD-480

FREDA BANKS

Petitioner

And

**AMERICAN FEDERATION OF STATE,
COUNTY, AND MUNICIPAL EMPLOYEES,
(AFSCME) COUNCIL 31, AFL-CIO AND
LOCAL 1115**

Union

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held on December 14, 2004, before a hearing officer of the National Labor Relations Board, herein referred to as the Board, to determine whether it is appropriate to conduct an election in light of the issues raised by the parties.¹

I. Issues

Freda Banks (herein the Petitioner) filed a petition seeking an election to determine whether certain employees of First Student (herein the Employer) wish to withdraw the authority of the American Federation of State, County, and Municipal Employees, Council 31, AFL-CIO

¹ Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

and Local 1115 (herein the Union) to require, under its agreement with their employer, that employees make certain lawful payments to the Union to retain their jobs.

The issue to be decided by the Regional Director is whether a valid union security clause currently exists to warrant an election to determine if the Union could continue to impose union security requirements. The Petitioner and the Employer maintain that although the 2004 agreement has not yet been signed and executed by the parties, a binding agreement, including a valid union security clause, currently exists since the parties reached oral agreement on all material terms and conditions of employment. Accordingly, the Petitioner and Employer contend that the petition is proper and that an election should be directed.

II. Decision

Based on the entire record in this proceeding and for the reasons set forth below, I find that the record establishes that there is no valid union security clause that currently exists, as the 2004 agreement negotiated by the Union and the Employer, which was not executed at the time the petition was filed, plainly states that the union security clause is effective only upon the execution of the collective bargaining agreement.

Accordingly, IT IS HEREBY ORDERED that the petition in the above matter be, and it hereby is, dismissed.

III. Statement of Facts and Analysis

The Employer is engaged in the business of bus transportation of students from its facility located in Park City, Illinois. In May 2000, the Union was certified as the collective bargaining representative of certain employees of the Employer. The Union currently represents the following unit for the purposes of collective bargaining:

All regular full-time and regular part-time bus drivers, aides, and fuelers employed by the Employer at its facility currently located at 3625 W. Washington Street, Park City, Illinois; but excluding all other employees, office clerical employees, and guards, professional employees, and supervisors as defined in the Act.

The stipulated record establishes that a contract existed between the Union and the Employer and was effective from May 13, 2001, through June 30, 2004 (herein the 2001 contract). When the 2001 contract expired in June 2004, the parties bargained and negotiated a successor contract, on which they reached oral agreement on October 28, 2004. The stipulated record states that the parties orally reached a complete meeting of the minds on all material terms and conditions of employment in October 2004. Although the October 2004 agreement has been reduced to writing, the parties are still proofreading the document and have not signed or executed the agreement. Article III of the parties' October 2004 agreement includes a union security clause, which remains unchanged from the 2001 contract, and states:

Section 1: Union Shop: Each employee covered by this Agreement shall, as a condition of employment, become and

remain a member of the Union not later than the thirtieth calendar day following his/her date of employment or the date of execution of this Agreement, whichever is the later.

The Board has consistently held that an employer's duty to check off and remit union dues is extinguished upon the expiration of the collective-bargaining agreement. *87-10 51st Avenue Owners Corp.*, 320 NLRB 993 (1996), citing *Robbins Door & Sash Co.*, 260 NLRB 659 (1982). See also *Beverly Health and Rehabilitation Services, Inc.*, 335 NLRB 635, 654 (2001). The Board, in *Beverly Health*, citing *Bethlehem Steel Co.*, 136 NLRB 1500 (1962), reiterated that

so long as a contract is in force, the parties may, consistent with its union-security provisions, require union membership as a condition of employment. However, upon the termination of a union security contract, the union-security provisions become inoperative and no justification remains for either party to the contract to impose union-security requirements.

Consequently, when the 2001 contract expired in June 2004, the union security clause that had been in effect up to that point also terminated and became invalid. Although the parties agree that they had a complete meeting of the minds on the 2004 agreement and may have implemented certain provisions of that new agreement, the very language of the parties' 2004 agreement makes the union security clause dependent on the execution of the contract. Simply, the language in Article III, Section 1 of the 2004 agreement necessitates a finding that the union security provisions in that agreement are not effective until that agreement is signed and executed by the parties.

Accordingly, since the union security clause in the 2001 contract expired in June 2004 and the union security clause in the 2004 agreement remains invalid until that agreement is signed and executed, I find that the petition is inappropriate and dismiss it.

IV. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20005-3419. This request must be received by the Board in Washington by **January 26, 2005**.

DATED at Chicago, Illinois this 12th day of January, 2005.

Regional Director
National Labor Relations Board
Region 13
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Chicago, Illinois 60606

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